

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICAN CRUISE LINES, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-324 (RGA)
)	
HMS AMERICAN QUEEN STEAMBOAT)	Redacted Public
COMPANY LLC, and AMERICAN QUEEN)	Version
STEAMBOAT OPERATING COMPANY,)	
LLC,)	
)	
Defendants.)	

**DECLARATION OF WAYNE H. XU
IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
Mary B. Graham (#2256)
Stephen J. Kraftschik (#5623)
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899-1347
(302) 658-9200
mgraham@mnat.com
skraftschik@mnat.com

Attorneys for American Cruise Lines, Inc.

OF COUNSEL:

David McI. Williams (*pro hac vice*)
Michael R. Naccarato (*pro hac vice*)
GORMAN & WILLIAMS
36 S. Charles Street, Suite 900
Baltimore, MD 21201-3114
(410) 528-0600

December 20, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

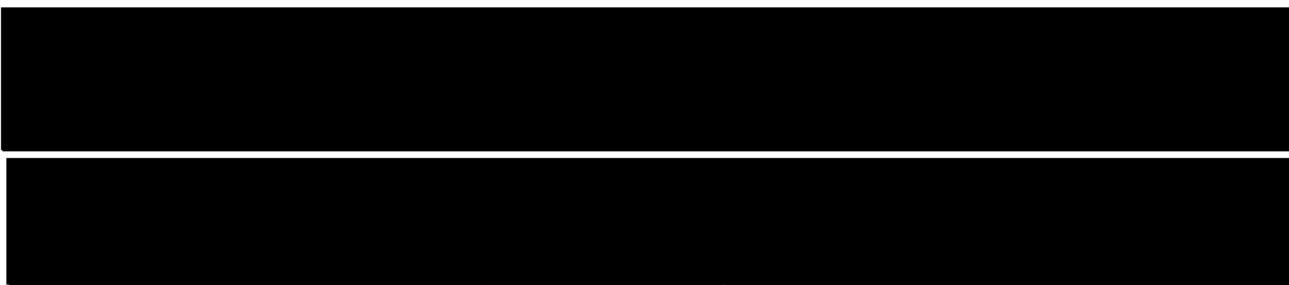
AMERICAN CRUISE LINES, INC.,)
v.)
Plaintiff,)
v.) C.A. No. 13-324 (RGA)
HMS AMERICAN QUEEN STEAMBOAT) Redacted Public
COMPANY LLC, and AMERICAN QUEEN) Version
STEAMBOAT OPERATING COMPANY,)
LLC,)
Defendants.)

DECLARATION OF WAYNE H. XU
IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, Wayne H. Xu, being over the age of eighteen (18), am an attorney at Gorman & Williams, which represents American Cruise Lines, Inc. ("American Cruise Lines") in the above-referenced case, and I have personal knowledge of the matters set forth in this Declaration. I am competent to testify regarding these matters and state as follows:

1. Exhibit 1 is a true and accurate copy of Exhibit A to Plaintiff American Cruise Lines' Motion to Dismiss Counts VII – XII of Defendants' Counterclaim (Dkt. 134), the Trademark Electronic Search System record for the service mark AMERICAN CRUISE LINES (Reg. No. 73412553).

2. Exhibit 2, ACL 48625, is a true and accurate copy of a newspaper article written by Vincent Randazzo and published in *The Times-Picayune* on October 2, 1983 entitled "Line Plans '84 series of cruises out of N.O. with its Independence."



5. Exhibit 5, ACL 49534-ACL 49555, is a true and accurate copy of the docket of Old ACL's bankruptcy in the U.S. Bankruptcy Court District of Connecticut (Hartford) (Bankruptcy Petition No. 88-21225).

6. Exhibit 6, ACL 48665-ACL 48668, is a true and accurate copy of the July 18, 1991 "Notice of Private Sale and Opportunity to Make Higher Offer," in *In the Matter of American Cruise Lines, Inc.*, filed in the United States Bankruptcy Court of District of Connecticut (Case No. 90-20180).



8. Exhibit 8 is a true and accurate copy of a Registration Certificate issued by the United States Patent and Trademark Office ("USPTO") to American Cruise Lines on November 29, 2005 for the service mark AMERICAN CRUISE LINES (Reg. No. 3019486).

9. Exhibit 9 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on December 13, 2005 for the word mark with design AMERICAN CRUISE LINES (Reg. No. 3025982).

10. Exhibit 10 is a true and accurate copy of a “Notice of Acceptance and Acknowledgment of §§ 8 & 15 Declarations” for Reg. No. 3019486 mailed on March 9, 2011 from the USPTO to Mark B. Harrison, counsel for American Cruise Lines.

11. Exhibit 11 is a true and accurate copy of a “Notice of Acceptance and Acknowledgment of §§ 8 & 15 Declarations” for Reg. No. 3025982 mailed on March 17, 2011 from the USPTO to Mark B. Harrison, counsel for American Cruise Lines.

12. Exhibit 12, ACL 48613, is a true and accurate copy of a newspaper article written by Vincent Randazzo and published in *The Times-Picayune* on February 23, 1986 entitled “Set sail along the Mississippi.”



16. Exhibit 16 is a true and accurate copy of an article written by Beth D'Addono and published in *Porthole Cruise Magazine* on April 15, 2013 entitled "Ship Spotlight - Queen of the Mississippi."



19. AMERICAN GLORY, Reg. No. 2,908,064 issued December 7, 2004 on the Principal Register in Class 39; Exhibit 19 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on December 7, 2004 for the service mark AMERICAN GLORY (Reg. No. 2908064).

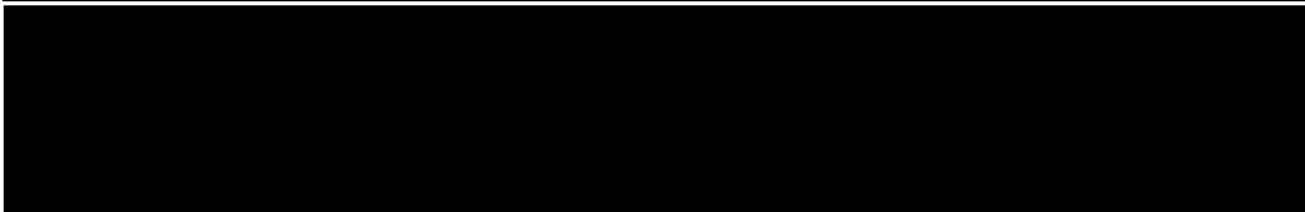
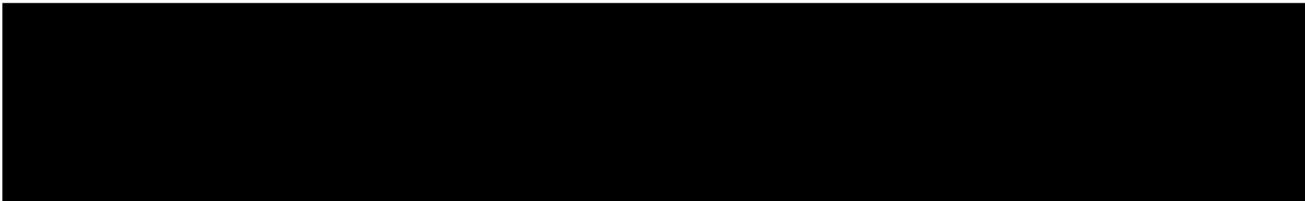
20. AMERICAN SPIRIT, Reg. No. 2,987,886 issued August 23, 2005 on the Principal Register in Class 39. Exhibit 20 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on August 23, 2005 for the service mark AMERICAN SPIRIT (Reg. No. 2987886).

21. AMERICAN STAR, Reg. No. 3,409,555 issued April 8, 2008 on the Principal Register in Class 39. Exhibit 21 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on April 8, 2005 for the service mark AMERICAN STAR (Reg. No. 3409555).

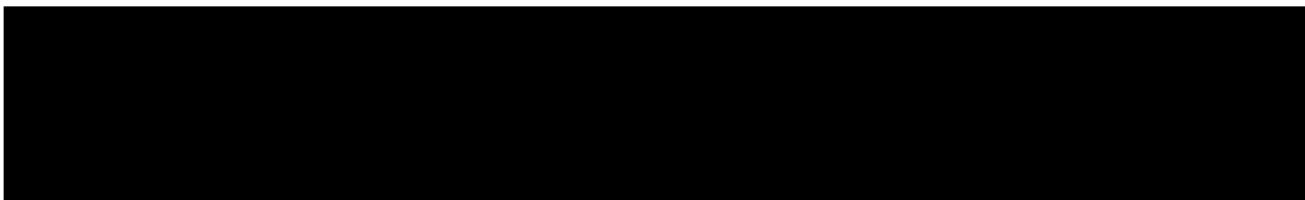
22. AMERICAN EAGLE, Reg. No. 4,777,732 issued July 21, 2015 on the Principal Register in Class 39. Exhibit 22 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on July 21, 2015 for the service mark AMERICAN EAGLE (Reg. No. 4777732).

23. American Cruise Lines applied for the registration of the mark, AMERICAN CONSTELLATION, Application No. 87040022. Exhibit 23 is a true and accurate copy of the Trademark/Service Mark Application filed in the USPTO by American Cruise Lines on May 17, 2016 for the service mark AMERICAN CONSTELLATION (Serial No. 87040022).

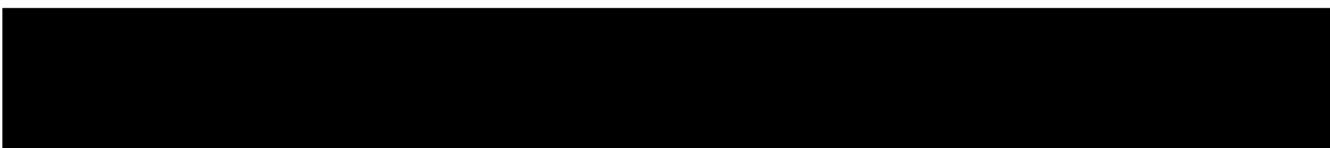
24. American Cruise Lines applied for the registration of the mark, AMERICAN HERITAGE, Application No. 86367665. Exhibit 24 is a true and accurate copy of the Trademark/Service Mark Application filed in the USPTO by American Cruise Lines on August 15, 2014 for the service mark AMERICAN HERITAGE (Serial No. 86367665).



27. Exhibit 27 is not used.

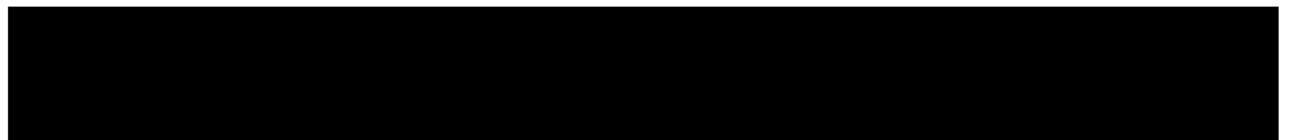
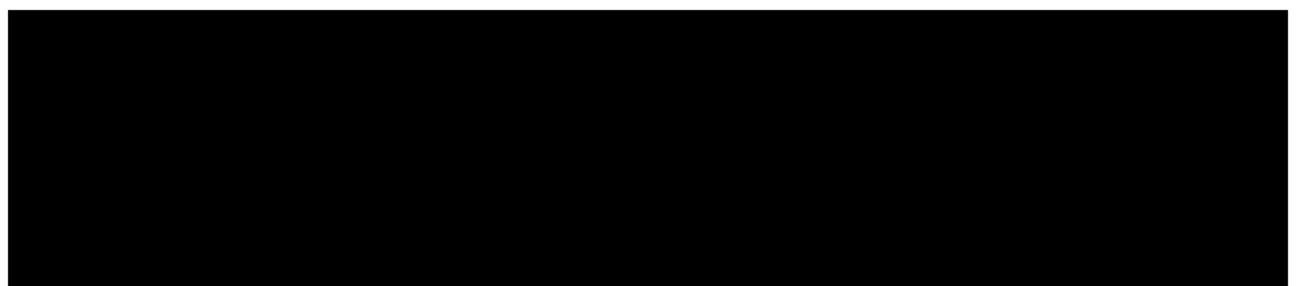
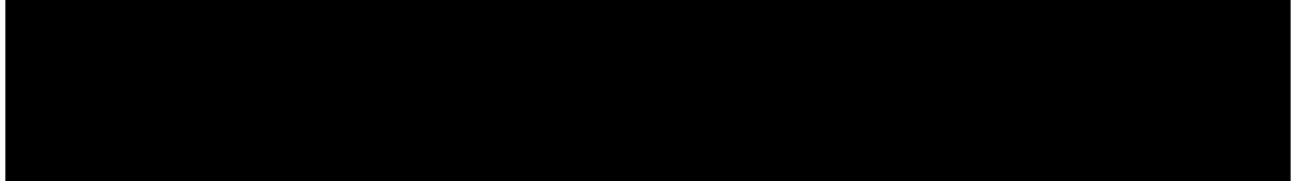


29. Exhibit 29 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on April 24, 2012 for the service mark THE GREAT AMERICAN STEAMBOAT CRUISE (Reg No. 4130763).

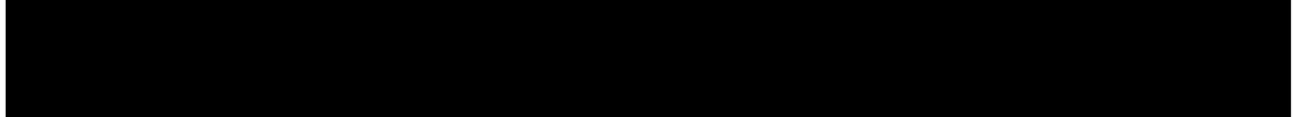
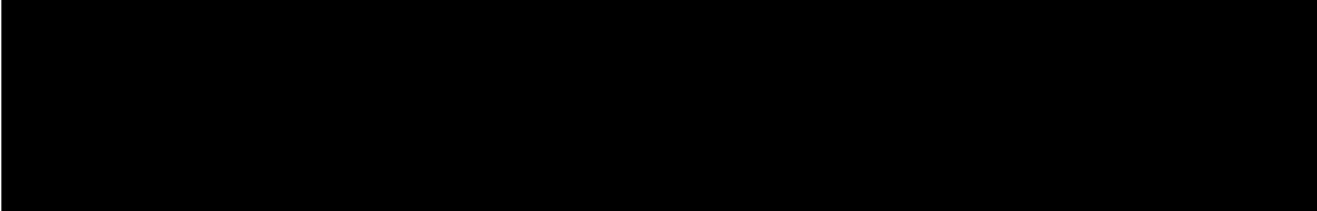
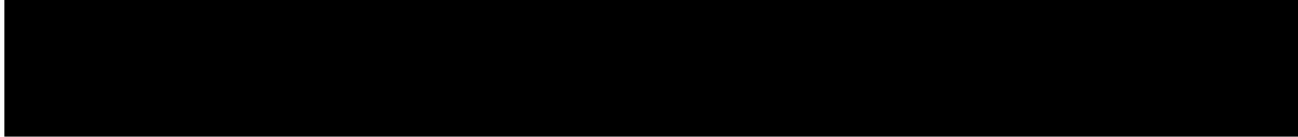
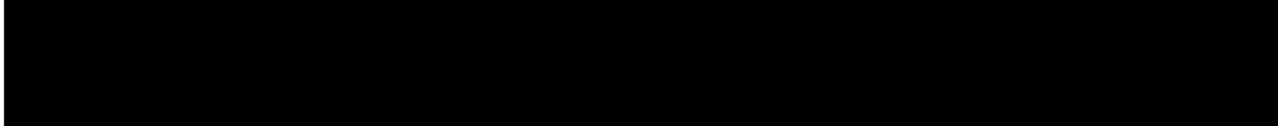


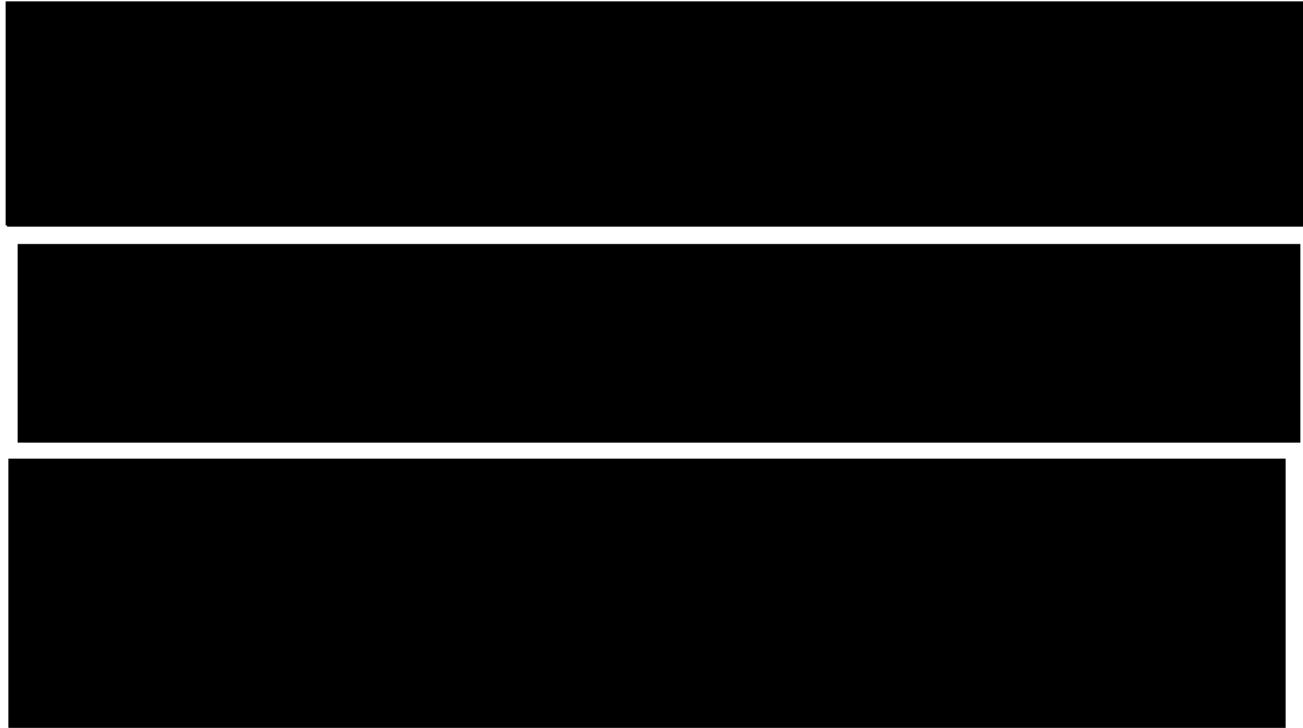


33. Exhibit 33, HMS0058097, is a true and accurate copy of Defendants' ("AQSC") advertisement regarding the inaugural season of its vessel *American Queen* commencing on April 13, 2012.



39. Exhibit 39 is a true and accurate copy of a Registration Certificate issued by the USPTO to AQSC on February 5, 2013 for the service mark THE AMERICAN QUEEN STEAMBOAT COMPANY (Reg. No. 4286568).





51. Exhibit 51, HMS0002787-HMS0002788, is a true and accurate copy of a web article written by Shawn Dake and published on *maritimematters.com* on June 20, 2012 entitled “Great American Steamboat Company To Be Renamed.”

52. Exhibit 52, ACL 02168-ACL 02169, is a true and accurate copy of a web article written by Dale K. DuPont and published in *www.workboat.com* on May 22, 2013 entitled “American Queen buys Empress of the North.”

54. AMERICA, Reg. No. 5009686 issued July 26, 2016 on the Principal Register in Class 39. Exhibit 54 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on July 26, 2016 for the service mark America (Reg. No. 5009686).

55. Exhibit 55 is a true and accurate copy of the portion of American Cruise Lines’ webpage listing its travel awards from 2013 to 2016.

56. Exhibit 56, is true and accurate copy of a screenshot of a Google search of the term “greatamericansteamboatcompany.com” that I captured on December 18, 2016.

57. Exhibit 57 is a true and accurate copy of a screenshot of the Google “Why This Ad” page for the search term “greatamericansteamboatcompany.com” that I captured on December 18, 2016.

58. Exhibit 58 is a true and accurate copy of AQSC’s May 21, 2013 press release entitled “The American Queen Steamboat Company Announces Westward Expansion as *AMERICAN EMPRESS* Joins Fleet” that I captured from the “Wayback Machine’s” record of AQSC’s [webpage](https://web.archive.org/web/20130608034622/http://www.americanqueensteamboatcompany.com/announcing-pacific-northwest) (<https://web.archive.org/web/20130608034622/http://www.americanqueensteamboatcompany.com/announcing-pacific-northwest>) on December 9, 2016.

59. Exhibit 59 is a true and accurate copy of the Trademark Status & Document Retrieval (“TSDR”) page for the AMERICAN CRUISE LINES mark (Application SN 75123680), showing an application filing date of June 21, 1996, and an abandoned date of July 8, 1998.

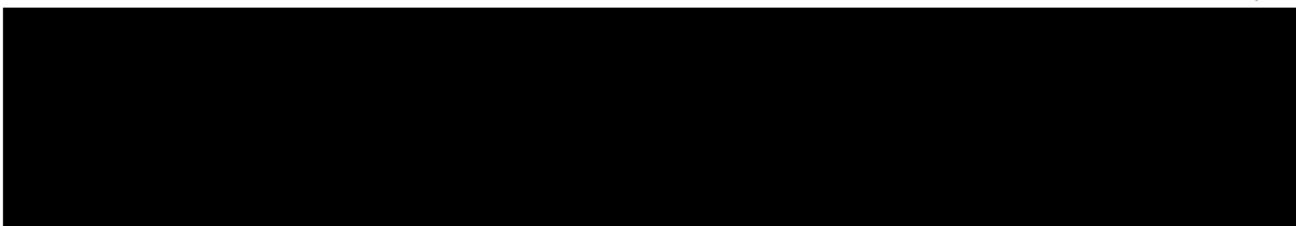
60. Exhibit 60 is a true and accurate copy of the TSDR page for the AMERICAN CRUISE LINES mark (Reg. No. 2437727), showing registration of the mark in the Supplemental Register on March 20, 2001 and a cancellation date of December 22, 2007.

61. Exhibit 61 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on March 20, 2001 for the word mark AMERICAN CRUISE LINES (Reg. No. 2437727) in the Supplemental Register.

62. Exhibit 62 is a true and accurate copy of the TSDR page for the AMERICAN CRUISE LINES word and design mark (Reg. No. 2437726), showing registration of the mark in the Supplemental Register on March 20, 2001 and a cancellation date of December 22, 2007.

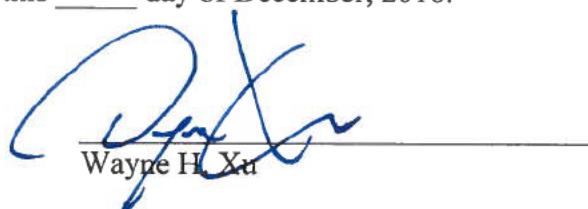
63. Exhibit 63 is a true and accurate copy of a Registration Certificate issued by the USPTO to American Cruise Lines on March 20, 2001 for the word mark with design AMERICAN CRUISE LINES (Reg. No. 32437726) in the Supplemental Register.

64. Exhibit 64 is a true and accurate copy of the USPTO's Trademark Snap Shot Public Stylesheet for the mark THE AMERICAN QUEEN STEAMBOAT COMPANY (SN 85305162).



Pursuant to 28 U.S.C. § 1746, I declare under the penalties of perjury that the foregoing is true and correct.

Executed in Baltimore, MD, this 20th day of December, 2016.

A handwritten signature in blue ink, appearing to read "Wayne H. Xu", is placed over a horizontal line.